

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Pooran Mal & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1204/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 6-8-2003 in Sessions Case
No.35/2001 (131/2000) passed by Shri Ajay Kumar
Meena, RHJS, Additional Sessions Judge (Fast Track)
No.1, Jaipur District Jaipur.

Date of Judgment: April 24, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for appellants.
Mr. Kamendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Satish Khandal, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

In this appeal, the appellants, six in number, have impugned the judgment dated August 6, 2003 of the learned Additional Sessions Judge (Fast Track) No.1, Jaipur District Jaipur whereby the appellants were convicted and sentenced as under:-

Pooran Mal, Pappu Ram, Dholu @ Ramphool, Dhanna, Bhagirath @ Bhagrata and Rajendra:

U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

U/s.148 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer simple imprisonment for

one month.

U/s.341 IPC:

Each to suffer simple imprisonment for one month.

U/s.323/149 IPC:

Each to suffer rigorous imprisonment for six months.

U/s.325/149 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs.1000/-.

In default of payment of fine each to suffer imprisonment for six months.

The substantive sentences were ordered to run concurrently.

Co-accused Bhonri Devi died during the course of trial and Mahadev and Ganga Ram were however acquitted of all the charges.

2. The prosecution case is as under:-

On August 18, 2000 informant Bhagwan Sahai (Pw.6) submitted a written report (Ex.P-27) at Police Station Shivdaspura stating therein that on the said day around 7.30 AM while Sanwta, Hanuman, Jairam and Sheo Narayan were going on a tractor to purchase Diesel, 10-15 persons including women armed with Sword, Gandasi, Axe, Rod and lathis surrounded the tractor and made assault. The names of assailants were Mahadev, Ganga Ram, Pooran, Bhagirath, Chhotu, Gopal, Gangaram, Dholya, Raju, Pappu, Dhanna, Rampyari, Rajanti, Bhonri, Gyarsi, Lalli, Bacchi and Laxma and they were inhabitants of Devgaon. As a result of assault Sanwta and Hanuman died on the spot. Both the hands of Jairam were cut in the incident. On that report case under sections 147, 148, 149, 323, 341, 447 and 302 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the

learned Additional Sessions Judge (Fast Track) No.1, Jaipur District Jaipur. Charges under sections 148, 341, 323/149, 325/149, 326/149 and 302/149 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 28 witnesses. Learned trial Court in addition to prosecution witnesses also examined six Court Witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Three witnesses in defence were produced. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. With the assistance of learned counsel for the appellants, learned Public Prosecutor and learned counsel for the complainant, we have scanned the material on record. We find that death of Sanwta Ram and Hanuman was homicidal in nature. Vide Post Mortem Report (Ex.P-33) following ante mortem injuries were found on the dead body of Sanwta Ram:-

1. Lacerated wound 4½cm x ½cm x Bone deep left side of frontal region
2. Lacerated wound 5½ cm x ½cm x bone deep over left parietal region.
3. Lacerated wound ½ cm x ½ x bone deep over occipital region.
4. Incised wound ½cm x bone deep Intrabone medial malleolus of Rt.ankle joint.
5. Lacerated wound 3cm x ½cm x muscle deep over middle of Rt. leg anteriorly
6. Close fracture of left humerus bone.
7. Incised wound 3½cm x ½cm x bone deep of lateral side of left leg 18cm above lateral malleolus
8. Incised wound 5cm x 2cm x bone deep 3cm below injury No.7.
9. Incised wound with open fracture 6cm x 2cm x bone deep 2½ below injury no.8 (both Tibia & Fibula).

10. Incised wound $2\frac{1}{2}$ cm x $\frac{1}{2}$ cm x skin deep 3cm above lateral malleolus of left leg.

As per Post Mortem Report of Hanuman (Ex.P-34) following ante mortem injuries were found on the dead body:-

1. Lacerated wound 5cm x 1cm x Bone deep over occipital region
2. Lacerated wound $5\frac{1}{2}$ cm x $1\frac{1}{2}$ cm x bone deep over occipital region just left & horizontal place.
3. Bruise & diffuse swelling 6 cm x 3cm over left cheek extending toward neck.
4. Close fracture of lower end of left Tibia and Fibula.

In the opinion of Dr. O.P.Meena (Pw.21) the cause of death of Sanwta Ram and Hanuman was shock due to injuries to vital organ brain.

4. We also notice that Jai Ram (Pw.7) and Sheo Narayan (Pw.3) also received injuries in the course of incident. Jai Ram vide injury report (Ex.P-30) received following injuries:-

1. Incised wound $5\frac{1}{2}$ x $1\frac{1}{2}$ x bone deep over extensive surface of left wrist.
2. Incised wound $3\frac{1}{2}$ x $\frac{1}{2}$ x muscle deep over Rt.forearm
3. Diffuse swelling 8cm x 4cm x over Rt.forearm.
4. Abrasion $\frac{1}{2}$ x $\frac{1}{2}$ x over left knee.

Whereas injury report (Ex.P-31) of Sheo Narayan reads as under:-

1. Incised wound 2cm x $\frac{1}{2}$ x muscle deep over extensive surface of left thumb.
2. Abrasion 1cm x $\frac{1}{2}$ cm over left forearm
3. C/o pain over left shoulder.

5. The principal contention as urged by the learned counsel for the

appellants in support of the appeal, however, has been that since the prosecution party was the aggressor on the land belonging to the accused persons and there being a right to protect the property, the doctrine of private defence ought to be made applicable.

6. Per contra, learned Public Prosecutor supported the impugned finding of learned trial court and contended that since all the appellants pleaded alibi at the trial, right of private defence is not available to them.

7. Before analysing the evidence of injured eye witnesses viz. Jai Ram (Pw.7) and Sheo Narayan (Pw.10) and other material on record we deem it appropriate to consider as to what is the doctrine of private defence. Right of private defence has been regulated and circumscribed by several principles and limitations. The most salient of them are as under:-

- (i) There is no right of private defence against an act which is not in itself an offence under the Code.
- (ii) The right avails only against a danger imminent, present and real.
- (iii) It is a defensive and not a punitive or retributive right and, therefore, the injury which is inflicted by the person exercising the right should be commensurate with the injury with which he is threatened. At the same time, it is difficult to expect from a person exercising this right in good faith, to weigh 'with golden scales' what maximum amount of force is necessary to keep within the right. Every reasonable allowance should be made for the bona fide defender if he with the instinct of self preservation strong upon him, pursues his defence a little further than may be strictly necessary in the circumstances to avert the attack. It would be wholly unrealistic to expect of a person under assault, to modulate his defence his defence step by step according to the attack.
- (iv) A person who is in imminent and reasonable danger of losing his life or limb may in the exercise of the right of self-

defence inflict any harm, even extending to death on his assailant either when the assault is attempted or directly threatened. This principle is also subject to the preceding rule that the harm or death inflicted to avert the danger is not substantially disproportionate to and incommensurate with the quality and character of the perilous act or threat intended to be repelled.

(v) There must be no safe or reasonable mode of escape by retreat for the person confronted with an impending peril to life or of grave bodily harm, except by inflicting death on the assailant.

(vi) The right does not accrue and avail where there is "time to have recourse to the protection of the public authorities".

8. Coming to the prosecution evidence we notice that Jai Ram (Pw.7) in his deposition stated that on August 18, 2000 he was driving tractor No.RRX 1698 and Sanwta Ram, Hanuman and Sheo Narayan were sitting on the tractor. They were proceeding towards village Deogaon for procuring diesel. As soon as they crossed village boundary and reached near 'water Kunchas' they were surrounded by the appellants who had deadly weapons in their hands. Sanwta and Hanuman jumped from the tractor and started running but they were belaboured by the appellants. Puran, who had 'Kharwari' in his hand, inflicted blow on the head of Sanwta whereas Dhanna, Raju, Bhagirath and Pappu gave blows with iron rods, Pharsa and Kharwari. Puran and Pappu also gave blows on the head of Hanuman and Dhanna inflicted blows with iron rod on his foot. Raju then gave Pharsa blow on his (Jai Ram) left hand and Pappu inflicted blow with Kharwari on his right hand.

Statement of Jai Ram gets corroboration from the testimony of Sheo Narayan (Pw.10).

9. Learned counsel for the appellants invited our attention to the

cross examination of these witnesses wherein they admitted that agricultural instruments got fitted in the tractor. We were also taken through Khasra Girdawari (Ex.D-8), Revenue Receipt (Ex.D-4), copy of revenue suit (Ex.D-6) instituted by Sheo Narayan, Bhagwan and Sheoram against the appellants in the court of SDM Jaipur East to show that the disputed agricultural land was in the possession of accused persons and the deceased and other members of complainant party came at the land to oust the accused persons from the land. In such situation the appellants had the right to protect their property. Learned Public Prosecutor however refuted their contention and urged that the defence of appellants at the trial was that they were not present at the time of offence and they were falsely implicated in the case. Thus right of private defence was not available to them.

10. Having pondered over the submissions and closely scanned the material on record we notice that all the appellants in their explanation under section 313 CrPC had raised plea of alibi. Appellant Puran Mal stated that on the day of incident he was not in his village but was on duty at Gokhle Hostel Maharaja College Jaipur. Appellant Bhagirath @ Bhagrata stated that on the day of the occurrence he was away from his house. Appellant Dhanna stated that one day prior to the incident he had gone to village Bassi and on the day of incident he was not in the village. Appellant Rajendra @ Raju stated that two days prior to the incident he had gone to village Ghati to meet his maternal uncle and on the day of incident he was not in his village. Appellant Dholu @ Ramphool stated that prior to the incident, on the occasion of Rakshabandhan he had gone to his in-laws house at village Deeppura and on the day of incident he was not in the village. Appellant Pappu Ram stated that prior to the incident he had gone to his in-laws house

at village Bhimpura on the occasion of Rakshabandhan and he was not in the village on the day of incident.

11. In our opinion plea of right of private defence is not available to the appellants who had raised plea of alibi. How could right of private defence arise to the appellants who denied having participated in the occurrence? Calcutta High Court in a similar situation in Yusuf SK Vs. The State (1954 CrLJ 774) indicated as under:- (Para 33)

“The fourth point urged is that the learned Judge in dealing with the case of Eusuf only placed before the jury the defence of ‘alibi’ and did not place the further defence that he was acting in the exercise of the right of private defence of property and person. Now, Eusuf Shekh in his statement under S.342, Criminal P.C., definitely stated that he was not present at the place of occurrence and that he was at Ichapur undergoing medical treatment at the time and evidence was adduced in support of that case. There are certain decisions that if the accused denies having participated in the occurrence at all, the right of private defence cannot arise.

In this connection, I may refer to - ‘1 Cal LR 62 (Q)’, where it was held that the act charged could not be denied and the plea of private defence raised as an alternative; and also to the Full Bench decision in - ‘AIR 1915 Cal 773 (C)’, where the law as laid down in – Jamsheer Sirdar's case (Q), was approved. More recently, in ‘AIR 1952 Cal 621 (G)’, it was held as follows:-

“A plea of the right of private defence can be taken by a person who admits the act charged against him, but pleads an excuse. If a person, however, states that he had not done the act at all, it is difficult to see how at the same time the question of a right of private defence would arise.”

12. In the case on hand the evidence on record depicts that the appellants had formed an unlawful assembly and crime was committed by them in prosecution of common object of the assembly. As already noticed

four unarmed persons were mercilessly attacked by the appellants out of which two had died and two sustained severe injuries. The evidence of injured eye witnesses could not be shattered in the cross examination and they are trustworthy and reliable. We do not see any infirmity in the impugned judgment of learned trial judge.

13. As a result of above discussion, we find no merit in the appeal and the same stands dismissed. Appellant Pappu Ram s/o Pooran Mal, who is on bail, shall be taken in custody forthwith. His bail bonds stand cancelled.

(Guman Singh),J.

(Shiv Kumar Sharma)J.

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